IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1119 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JITENDRA GADALAL PARMAR - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
MR AMIT J SHAH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 31.08.1995 passed by the learned Metropolitan Magistrate, Court No. 10, Ahmedabad in Summary Case No. 346 of 1993 whereby, the respondent was acquitted of the offences punishable

u/s. 279 & 337 of the Indian Penal Code and Sections 177, 184 & 134-B of the Motor Vehicles Act.

2.0 The brief facts of the prosecution case are as under;

2.1 On 15.12.1992 at around 1600 hrs., while the complainant was proceeding towards his home on foot, the respondent, who was driving a two-wheeler [Scooter], dashed him on account of which the complainant suffered several bodily injuries. The complainant was admitted to 'Shardaben' Hospital, Ahmedabad for necessary medical treatment. In the evening, a complaint was filed against the respondent before Gomtipur Police Station, Ahmedabad for offences punishable u/s. 279 & 337 of the Indian Penal Code and Sections 177, 184 & 134-B of the Motor Vehicles Act.

2.2 Necessary investigation was carried out. During the course of investigation, as sufficient material was found against the respondent, he was arrested and, ultimately, charge-sheet was filed against him before the Court of learned Metropolitan Magistrate, Court No. 10, Ahmedabad. Trial was initiated against the respondent and at the end of trial, the learned Magistrate acquitted the respondent of the offences alleged against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been

very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 It is not in dispute that the incident in question took place in broad day-light and that to in a thickly populated area. However, there is no evidence on record in the form of deposition/s of any independent eye-witness/s, which may support the case of the prosecution or, in that matter, the story as narrated by the complainant. It is well settled that solely on the basis of the say of the complainant, a conviction cannot be recorded when in all probability the existence of independent eye-witness/s to the alleged incident in question appears to be in existence. In the case on hand, the same proposition shall apply. Being a thickly populated area, essentially there would have been some eye-witness to the incident in question. However, the prosecution case has not got any support from any of such witness/s. Thus, except the complaint of the injured person, there is no other evidence on record to support the case of the prosecution.

5.0 So far as the evidence led by one Jaydeepsinh is concerned, the same also will not have any evidentiary value in view of the fact that it suffers from many contradictions. Apart from that from the cross-examination of this witness, it is clearly established that he was not present at the scene of offence at the relevant point of time.

6.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the offences alleged against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording

the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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